

AMENDED IN SENATE MARCH 30, 2006

**SENATE BILL**

**No. 1386**

---

**Introduced by Senator Morrow**

*(Coauthors: Assembly Members Benoit, Cogdill, Huff, Maze,  
Mountjoy, and Strickland)*

February 21, 2006

---

An act to amend Section 631 of the Code of Civil Procedure,  
relating to jury trials.

LEGISLATIVE COUNSEL'S DIGEST

SB 1386, as amended, Morrow. Civil actions: jury trials.

Existing law protects the right of parties to a jury trial, but authorizes a jury to be waived in civil cases in any one of specified ways, including by a party's failure to appear, written consent filed with the clerk or judge, oral consent in open court, failure to announce that a jury is required, and failure to deposit jury fees with the court.

This bill would provide that in a civil case, a written agreement to waive a jury trial with respect to an existing or future controversy is valid, enforceable, and irrevocable, except as specified. The bill would also set forth related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds and declares as
- 2 follows:
- 3 (1) Agreements to resolve disputes in front of a judge rather
- 4 than a jury promote cost-reduction, predictability, and fairness.

1 (2) Forty-eight states allow predispute jury waivers and it is  
2 time for the Legislature to enact legislation expressly authorizing  
3 predispute jury waivers in California.

4 (b) Therefore, it is the intent of the Legislature to respond to  
5 Justice Chin's invitation in his concurring opinion in the case of  
6 Grafton Partners v. Superior Court (2005) 36 Cal.4th 944, to  
7 enact legislation expressly authorizing predispute jury waivers.

8 SEC. 2. Section 631 of the Code of Civil Procedure is  
9 amended to read:

10 631. (a) The right to a trial by jury as declared by Section 16  
11 of Article I of the California Constitution shall be preserved to  
12 the parties inviolate. In civil cases, a jury may only be waived  
13 pursuant to subdivision (d).

14 (b) Each party demanding a jury trial shall deposit advance  
15 jury fees with the clerk or judge. The total amount of the advance  
16 jury fees ~~may~~ *shall* not exceed one hundred fifty dollars (\$150)  
17 for each party. The deposit shall be made at least 25 calendar  
18 days before the date initially set for trial, except that in unlawful  
19 detainer actions the fees shall be deposited at least five days  
20 before the date set for trial.

21 (c) The parties demanding a jury trial shall deposit with the  
22 clerk or judge, at the beginning of the second and each  
23 succeeding day's session, a sum equal to that day's fees and  
24 mileage of the jury, including the fees and mileage for the trial  
25 jury panel if the trial jury has not yet been selected and sworn. If  
26 more than one party has demanded a jury, the respective amount  
27 to be paid daily by each party demanding a jury shall be  
28 determined by stipulation of the parties or by order of the court.

29 (d) A party waives trial by jury in any of the following ways:

- 30 (1) By failing to appear at the trial.  
31 (2) By written consent filed with the clerk or judge.  
32 (3) By oral consent, in open court, entered in the minutes.  
33 (4) By failing to announce that a jury is required, at the time  
34 the cause is first set for trial, if it is set upon notice or stipulation,  
35 or within five days after notice of setting if it is set without notice  
36 or stipulation.

37 (5) By failing to deposit with the clerk, or judge, advance jury  
38 fees as provided in subdivision (b).

1 (6) By failing to deposit with the clerk or judge, at the  
2 beginning of the second and each succeeding day's session, the  
3 sum provided in subdivision (c).

4 (7) In a civil case, a written agreement to waive trial by jury  
5 with respect to any existing controversy or a controversy arising  
6 thereafter is valid, enforceable, and irrevocable, except upon  
7 those grounds as exist for the revocation of any contract.

8 (e) The court may, in its discretion upon just terms, allow a  
9 trial by jury although there may have been a waiver of a trial by  
10 jury.